

# Notice of Allowability

Application No.

09/349,915

Examiner

Phillip Gambel

Applicant(s)

JUNE ET AL.

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 5/3/04; 7/22/04; 8/13/04; 9/22/04
2. ☒ The allowed claim(s) is/are 60-64, 66-78 RENUMBERED 1-18
3. ☒ The drawings filed on 11/2/02 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

PHILLIP GAMBEL  
Phillip Gambel  
Primary Examiner 9/30/04  
Art Unit: 1644  
TECH CENTRAL 1600

### DETAILED ACTION

1. Applicant's amendment, filed 5/3/04, has been entered.  
Claims 1-59 and 65 have been canceled.

Claim 64 has been amended.

It is noted that this amendment indicates that claim 64 was previously presented rather than amended. For examination purposes, it is considered "(currently amended)".

Claims 78-79 have been added.

Applicant's amendment, filed 7/22/04, has been entered.

Applicant's amendment, filed 8/13/04, has been entered.  
Claims 77-78 have been added.

Applicant's amendment, filed 9/22/04, has been entered.  
Claims 60-63 have been amended.

Claims 60-64 and 66-78 are pending.

### REASONS FOR ALLOWANCE

2. The following is an Examiner's Statement of Reasons for Allowance:

Upon reconsideration of applicant's amended claims, the previous rejection under 35 USC 112, first paragraph, with respect to "cell surface molecules" has been withdrawn.

Applicant's amendment in conjunction with a Copy of the Correspondence with Ms. Tanya Nunnally at the ATCC, filed 5/3/04 and 8/13/04, have provided for the public availability of the 9.3 antibody (ATCC No. HB-10271).

Applicant's Remarks concerning the deposit and assurances of the EX5.3D10 (ATCC No. HB-11373), filed 8/13/04, are sufficient to satisfy the deposit of biological materials under 35 U.S.C. § 112, first paragraph.

The terminal disclaimers filed on 5/11/04 (mailed 5/3/04) and 9/22/04, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent Nos. 6,352,694 and 6,534,055 and USSNs 08/253,964, 08/592,711 and 09/349,915 have been reviewed and have been accepted. The terminal disclaimers have been recorded.

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Upon reconsideration of the pending claims in conjunction with applicant's comments, filed 7/27/04; the previous provisional rejection under the judicially created doctrine of obviousness-type double patenting as being unpatentable over commonly assigned copending USSNs 09/183,055 and 09/553,865 have been withdrawn.

Accordingly, the pending claims are deemed allowable.

3. Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gambel whose telephone number is (571) 272-0844. The examiner can normally be reached Monday through Thursday from 7:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841.

The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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